O. Mohammedan Law/51

K

1951.

File No. Law/51

Legal Department

A **BRANCH**

Subject:—

Opinions re:

Mohammedan Law.

P-5/60

O. Mohammedan Law/51

File No.

Gen. 194 e.

707-A

C O N T E N T S.

Legal Department File No. C. Mohommedan Law/1951

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Legal Department.

As mentioned by Mulla at page 54 of Mahommedan Law when the members of a Mohammedan family live in commensality they do not form a joint family in the sense in which that expression is used in the Hindu Law. There is no presumption also that the acquisitions of the several members of a family living and messing together are for the benefit of the family. Nevertheless if during the continuance of the family, properties are acquired in the name of the managing member of the family, and it is proved that they are possessed by all the members jointly the presumption is that they are the properties of the family, and not the separate properties of the member in whose name they stand (Aminodin vs. Tajjadin, (1932) 59 Cal. 541; 1381 C. 761). Unless it is possible to prove that both Alam Pyaran and his son Shamsuddin, and Abdulla Pyaran were members of one family during the continuance of which the properties were acquired and that though they stand in the name of Alam Pyaran, they are held jointly by all three of them, it appears it would not be possible to justify the auction sale. There is therefore no objection to the Revenue Department proposal to make an enquiry as at "A" on page 74 ante.

Id./.....

Additional Secretary to Government

U.O. to R.D.No. 15134, dated 22nd September 19

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Office of the R.L.A.

Cash allowance
Heirship enquiry
Mahomedan Law.

It is true that Shrimati Fatimabai is not a sharer or a Residuary under the Hanafi Law(vide the tables at pp. 69A and 66A of Mulla's Mahomedan Law, 13th Edition); but she will fall underthe category of distant kindred of the deceased and would be entitled to inherit(Mulla's Mahomedan Law, p. 75). Further from the geneological tree at page 23 of the case papers she also appears to be a descedant of Shri Farakkham,the original grantee, and there would be no objection to continue the allowance to her if there are no nearer heirs of the deceased.

Id./.... 3/10

Remembrancer of Legal Affairs

U.O. to R.D. No. 15743 dated 4th October 1951.

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R.I.No. 740 dated 20-11-51

Submitted.

Government Circular Memo., P.& S.D., No. 1473/46 dated the 20th March 1950, requi-res all Government servants whose families reside in Western Pakistan to bring out such families to India and prescribes punishment for failure to do so within a specified time It appears the wife of Shri S.M.Mukhtar, a teacher in the Anglo Urdu High School, Poona, has been residing at Karachi(Pakistan) since 1949. In this connection the D.P.I.Poona in his letter dated 4-8-1951 has stated thus:

"As regards Shri Mukhtar he had repo rted the fatt that his wife was in Pakistan to this office through the Head Master Anglo Urdu High School, Poona and had asked fora permit to ~~xx~~ bring her back to India and this fact was reported to Government under this office Confl. No. S.46(f)-B, dated the 1st September 1950. Subsequently Shri Mukhtar 's wife, it appears refused to come over to India and consequently Shri Mukhtar has given her a divorce and got himself remarried".

Mr. Mukhtar it appears was asked by the D.P.I. to produce a letter or certificate of divorce from the Court to the effect that he has divorced his wife. In reply to this Shri Mukhtar has stated thus:

"In Mohamedan Law when a man gives a divorce to his wife he can do so by the mere word of his mouth: he need not go to the Court of law much less obtain a certificate from it in order to give a divorce to his wife Therefore I need not produce anything from the Court to show that I have divorced my wife . In this connection I state that when I had been to Karachi last time I divorced my wife and subsequently contracted another marriage in India".

The Education Department considers that in vie of R.L.A.'s opinion No. 108 Confl. dated the 11th February 1950 Shri Mukhtar's statement is correct and the divorce given by him is valid.

Before however any final decision is taken in the R.L.A. is requested to advise.

The view at "A" on page 22 ante is correct.

Id./.... 28/11

Addl.Secy. Id./.... 28/11

U.R. to E.D.No. 990 Confl. dt. 29-11-1951.

SMR 23-6-56
4 Copies.